

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

KAPPA ALPHA THETA FRATERNITY,  
INC.; KAPPA KAPPA GAMMA  
FRATERNITY; SIGMA CHI; SIGMA  
ALPHA EPSILON; SIGMA ALPHA  
EPSILON--MASSACHUSETTS GAMMA;  
JOHN DOE 1; JOHN DOE 2; JOHN DOE 3,

Plaintiffs,

v.

HARVARD UNIVERSITY; PRESIDENT  
AND FELLOWS OF HARVARD COLLEGE  
(HARVARD CORPORATION),

Defendants.

Civil Action No. 18-cv-12485-NMG

**DEFENDANT PRESIDENT AND FELLOWS OF HARVARD COLLEGE’S  
ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant President and Fellows of Harvard College (“Harvard”) instituted its policy on unrecognized single-gender social organizations (the “Policy”)—after months of deliberation, reflection, and consultation—in order to advance Harvard’s pedagogical mission. The Policy, which pertains only to Harvard students who knowingly chose to matriculate after the Policy was adopted, applies equally to every Harvard student, regardless of sex or gender. The Policy is, in short, a measured and lawful expression of Harvard’s core values of inclusion, non-discrimination, and equality. Plaintiffs’ complaint turns these values on their head, seeking to promote organizations that exclude members solely based on their sex—the precise exclusionary behavior that the Policy was designed to reduce in the Harvard community. Harvard answers

Plaintiffs' complaint as follows, and denies any and all allegations not expressly admitted herein.\*

1. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard denies Plaintiffs' characterizations of the Policy. Harvard admits that the Seneca is currently a recognized, gender-neutral student organization. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 1 and therefore denies them.

2. Harvard denies the allegations in Paragraph 2.

3. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard denies the allegations in Paragraph 3.

4. Harvard states that the Policy speaks for itself. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 4 and therefore denies them.

5. Harvard states that the Policy speaks for itself. Harvard admits that the Radcliffe Choral Society and the Harvard Glee Club are currently recognized, gender-neutral student organizations. Harvard denies the remaining allegations in Paragraph 5.

6. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard denies that the Harvard chapter of the Knights of Columbus or of the Daughters of Isabella is a social organization covered by the Policy. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 6 and therefore denies them.

7. Harvard states that the Policy speaks for itself. Harvard states that to the extent the allegations in Paragraph 7 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 7 are inconsistent with any such document, Harvard

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\* Harvard denies any allegations that may be contained in the headings, subheadings and tables in Plaintiffs' complaint, which are omitted from this answer.

denies the allegations in Paragraph 7. To the extent that Paragraph 7 contains allegations neither set forth in a written document nor inconsistent with such a document, Harvard denies them.

8. Harvard states that to the extent the allegations in Paragraph 8 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 8 are inconsistent with any such document, Harvard denies the allegations in Paragraph 8. To the extent that Paragraph 8 contains allegations neither set forth in a written document nor inconsistent with such a document, Harvard denies them.

9. Harvard lacks sufficient information to admit or deny the allegations in the unidentified, unattributed quotations in Paragraph 9, and therefore denies them. Harvard states that to the extent the allegations in the final sentence of Paragraph 9 are from a written document, the document speaks for itself and, to the extent the allegations in the final sentence of Paragraph 9 are inconsistent with any such document, Harvard denies the allegations in the final sentence of Paragraph 9. Harvard denies the remaining allegations in Paragraph 9.

10. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard denies the allegations in Paragraph 10.

11. Harvard admits that the Policy applies only to students matriculating in the fall of 2017 and thereafter. Harvard denies the remaining allegations in Paragraph 11.

12. Harvard denies that the Policy violates any state or federal law or constitutional provision. To the extent Paragraph 12 states conclusions of law, no response is necessary.

13. Paragraph 13 states conclusions of law, to which no response is necessary.

14. Paragraph 14 states conclusions of law, to which no response is necessary. To the extent a response is necessary, Harvard states that the Congressional Record speaks for itself,

and that Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 14 and therefore denies them.

15. Paragraph 15 states conclusions of law, to which no response is necessary. To the extent a response is necessary, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 15 and therefore denies them.

16. Paragraph 16 states conclusions of law, to which no response is necessary.

17. Paragraph 17 states conclusions of law, to which no response is necessary.

18. Paragraph 18 states conclusions of law, to which no response is necessary.

19. Paragraph 19 states conclusions of law, to which no response is necessary.

20. Paragraph 20 states conclusions of law, to which no response is necessary.

21. Harvard denies the allegations in Paragraph 21.

22. Harvard denies that the Policy violates any state or federal law or constitutional provision. To the extent Paragraph 22 states conclusions of law, no response is necessary.

23. Harvard denies the allegations in Paragraph 23.

24. Paragraph 24 states conclusions of law, to which no response is necessary.

25. Harvard admits the allegations in Paragraph 25.

26. No response to Paragraph 26 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

27. No response to Paragraph 27 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

28. No response to Paragraph 28 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

29. No response to Paragraph 29 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39. To the extent a response is required, Harvard states that the Policy speaks for itself and denies Plaintiffs' characterizations of the Policy. Harvard further states that to the extent the allegations in Paragraph 29 are from a written document, the document speaks for itself and, to the extent the allegations in Paragraph 29 are inconsistent with any such document, Harvard denies the allegations in Paragraph 29. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 29 and therefore denies them.

30. No response to Paragraph 30 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

31. No response to Paragraph 31 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

32. No response to Paragraph 32 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

33. No response to Paragraph 33 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39. To the extent a response is required, Harvard admits that the Fleur-de-Lis Club is a

recognized, gender-neutral student organization. Harvard states that the Policy speaks for itself and denies Plaintiffs' characterizations of the Policy. Harvard further states that to the extent the allegations in Paragraph 33 are from a written document, the document speaks for itself and, to the extent the allegations in Paragraph 33 are inconsistent with any such document, Harvard denies the allegations in Paragraph 33. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 33 and therefore denies them.

34. No response to Paragraph 34 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

35. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 35 and therefore denies them.

36. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 36 and therefore denies them.

37. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 37 and therefore denies them.

38. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 38 and therefore denies them.

39. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 39 and therefore denies them.

40. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 40 and therefore denies them.

41. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 41 and therefore denies them.

42. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 42 and therefore denies them.

43. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 43 and therefore denies them.

44. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 44 and therefore denies them.

45. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 45 and therefore denies them.

46. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 46, which concern an unidentified individual, and therefore denies them.

47. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard denies Plaintiffs' characterizations of the Policy. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 47, which concern an unidentified individual, and therefore denies them.

48. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 48, which concern an unidentified individual, and therefore denies them.

49. Harvard lacks sufficient information to admit or deny the allegations in the fourth sentence of Paragraph 49, and therefore denies them. Harvard denies the remaining allegations in Paragraph 49.

50. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 50, which concern an unidentified individual, and therefore denies them.

51. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard denies Plaintiffs' characterizations of the Policy. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 51, which concern an unidentified individual, and therefore denies them.

52. Harvard lacks sufficient information to admit or deny the allegations in the fourth sentence of Paragraph 52, and therefore denies them. Harvard denies the remaining allegations in Paragraph 52.

53. No response to Paragraph 53 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

54. No response to Paragraph 54 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39.

55. Harvard denies the allegations in Paragraph 55 regarding the name of the corporation, which is "President and Fellows of Harvard College"; Harvard University has no corporate existence. Harvard otherwise admits the allegations in Paragraph 55.

56. Harvard admits that the Harvard Corporation is one of two Harvard governing boards and, together with the Board of Overseers, governs Harvard University and performs roles associated with a board of trustees.

57. Harvard admits that Harvard College is a component of Harvard University that offers undergraduate programs. Harvard otherwise denies the allegations in Paragraph 57.



58. Harvard denies the allegations in Paragraph 58.

59. Harvard admits that, as of June 30, 2018, Harvard University's endowment was valued at approximately \$39.2 billion. Harvard admits that Harvard University receives federal funding in various forms—including research funding—and that it received more than \$6.6 million from such sources in 2010, more than \$11.9 million in 2011, more than \$20.9 million in 2012, and more than \$13.4 million in 2013. Harvard denies the remaining allegations in Paragraph 59.

60. Harvard states that to the extent the allegations in Paragraph 60 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 60 are inconsistent with any such document, Harvard denies the allegations in Paragraph 60. Harvard admits that it received federal funds in 2018 and 2019. Harvard admits that Harvard College enrolls a number of students who receive federal financial aid. Harvard denies the remaining allegations in Paragraph 60.

61. Paragraph 61 states conclusions of law, to which no response is necessary.

62. Harvard admits that the Policy was developed over a period of years. Harvard denies the remaining allegations in Paragraph 62.

63. Harvard admits that it was founded in 1636 as a single-sex educational institution and remained so into the 19th century.

64. Harvard admits that Radcliffe College was chartered in 1894 and provided separate instruction to women. Harvard admits that, at that time, Radcliffe degrees were awarded, and courses were taught by Harvard faculty, as Radcliffe did not have its own faculty.

65. Harvard admits that Harvard and Radcliffe reached an agreement for joint instruction in 1943, during World War II. Harvard admits that in 1963, Radcliffe graduates began receiving Harvard degrees. Harvard denies the remaining allegations in Paragraph 65.

66. Harvard denies the allegations in Paragraph 66.

67. Harvard denies the allegations in the first two sentences of Paragraph 67. Harvard states that to the extent the remaining allegations in Paragraph 67 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 67 are inconsistent with any such document, Harvard denies the remaining allegations in Paragraph 67.

68. Harvard admits that Radcliffe merged with Harvard in 1999. Harvard admits that the Radcliffe Union of Students, the Radcliffe Choral Society, and the Radcliffe Pitches are recognized, gender-neutral student organizations at Harvard. Harvard denies that these or other recognized student organizations restrict membership on the basis of gender. Harvard admits that a varsity crew team and women's rugby union at Harvard use the Radcliffe name. Harvard denies the remaining allegations in Paragraph 68.

69. Harvard denies that, in the fall of 2014, recognized student organizations restricted membership on the basis of gender. Harvard admits that, in the fall of 2014, Harvard undergraduates could join many recognized student organizations.

70. Harvard denies that recognized student organizations in 2014 included sororities, fraternities, or "final clubs." Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 70 and therefore denies them.

71. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 71 and therefore denies them.

72. Harvard admits that unrecognized organizations are not permitted to conduct certain activities at Harvard, as detailed in Harvard's policy regarding undergraduate organizations, which speaks for itself. Harvard admits that these organizations are independent of the University. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 72 and therefore denies them.

73. Harvard admits that the undergraduate population in the 2014-2015 academic year was approximately 6,636 students. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 73, including those in the chart accompanying Paragraph 73, and therefore denies them.

74. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 74 and therefore denies them.

75. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 75 and therefore denies them.

76. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 76 and therefore denies them.

77. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 77 and therefore denies them.

78. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 78 and therefore denies them.

79. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 79 and therefore denies them.

80. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 80 and therefore denies them.

81. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 81 and therefore denies them.

82. Harvard admits that final clubs are independent of Harvard. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 82 and therefore denies them.

83. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 83 and therefore denies them.

84. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 84 and therefore denies them.

85. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 85 and therefore denies them.

86. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 86 and therefore denies them.

87. Harvard admits that the Asian American Brotherhood, Black Men's Forum, Asian American Women's Association, and South Asian Women's Collective are recognized Harvard student organizations. Harvard denies that these or other recognized student organizations restrict membership on the basis of gender. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 87 and therefore denies them.

88. Harvard admits that the Glee Club, Radcliffe Choral Society, Krokodiloes, and Radcliffe Pitches are recognized Harvard student organizations. Harvard denies that these or other recognized student organizations restrict membership on the basis of gender. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 88 and therefore denies them.

89. Harvard admits that the Radcliffe Choral Society and the Harvard Glee club are currently not single-sex organizations. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 89 and therefore denies them.

90. Harvard admits that it operates the Harvard College Women's Center. Harvard states that to the extent the allegations in Paragraph 90 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 90 are inconsistent with any such document, Harvard denies the allegations in Paragraph 90.

91. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 91 and therefore denies them.

92. Harvard denies the allegations in Paragraph 92.

93. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 93 and therefore denies them.

94. Harvard states that to the extent the allegations in Paragraph 94 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 94 are inconsistent with any such document, Harvard denies the allegations in Paragraph 94.

95. Harvard states that to the extent the allegations in Paragraph 95 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 95 are inconsistent with any such document, Harvard denies the allegations in Paragraph 95. To the extent that Paragraph 95 contains allegations neither set forth in a written document nor inconsistent with such a document, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 95 and therefore denies them.

96. Harvard states that to the extent the allegations in Paragraph 96 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 96 are

inconsistent with any such document, Harvard denies the allegations in Paragraph 96. To the extent that Paragraph 96 contains allegations neither set forth in a written document nor inconsistent with such a document, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 96 and therefore denies them.

97. Harvard states that to the extent the allegations in Paragraph 97 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 97 are inconsistent with any such document, Harvard denies the allegations in Paragraph 97. To the extent that Paragraph 97 contains allegations neither set forth in a written document nor inconsistent with such a document, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 97 and therefore denies them.

98. Harvard states that the Policy speaks for itself. To the extent a further response is required, Harvard denies Plaintiffs' characterizations of the Policy. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 98 and therefore denies them.

99. Harvard admits that Professor Rakesh Khurana became Dean of Harvard College in July 2014. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 99 and therefore denies them.

100. Harvard admits that a meeting between Dean Khurana and members of certain unrecognized social organizations took place on or about October 6, 2014. Harvard denies the remaining allegations in Paragraph 100.

101. Harvard admits that Dean Khurana had sat in on a meeting with representatives of final clubs in spring 2014. Harvard denies the remaining allegations in Paragraph 101.

102. Harvard denies the allegations in Paragraph 102.

103. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 103 and therefore denies them.

104. Harvard admits that a meeting between Dean Khurana and representatives of certain final clubs took place on or about May 4, 2015. Harvard denies the remaining allegations in Paragraph 104.

105. Harvard denies the allegations in Paragraph 105.

106. Harvard denies the allegations in the first sentence of Paragraph 106. Harvard admits that President Faust convened a Task Force on the Prevention of Sexual Assault in April 2014. Harvard admits that a complaint was filed with the Department of Education in 2014. Harvard states that to the extent the allegations in Paragraph 106 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 106 are inconsistent with any such document, Harvard denies the allegations in Paragraph 106.

107. Harvard denies the allegations in Paragraph 107.

108. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 108 and therefore denies them.

109. Harvard denies the allegations in Paragraph 109.

110. Harvard admits that meetings between Dean Khurana and representatives of final clubs occurred in 2015. Harvard denies the remaining allegations in Paragraph 110.

111. Harvard states that to the extent the allegations in Paragraph 111 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 111 are inconsistent with any such document, Harvard denies the allegations in Paragraph 111.

112. Harvard admits that Dean Khurana met on several occasions with representatives of final clubs. Harvard denies the remaining allegations in Paragraph 112.

113. Harvard admits that Dean Khurana received a letter on or about September 11, 2015. Harvard states that to the extent the allegations in Paragraph 113 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 113 are inconsistent with any such document, Harvard denies the allegations in Paragraph 113.

114. Harvard admits that Dean Khurana met with representatives of final clubs on or about September 17, 2015. Harvard denies the remaining allegations in Paragraph 114.

115. Harvard denies the allegations in Paragraph 115.

116. Harvard denies the allegations in Paragraph 116.

117. Harvard admits that Dean Khurana received a letter from the Porcellian Club on or about October 1, 2015. Harvard states that to the extent the allegations in Paragraph 117 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 117 are inconsistent with any such document, Harvard denies the allegations in Paragraph 117.

118. Harvard admits that a meeting between Dean Khurana and representatives of final clubs occurred on or about October 1, 2015. Harvard denies the remaining allegations in Paragraph 118.

119. Harvard states that to the extent the allegations in Paragraph 119 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 119 are inconsistent with any such document, Harvard denies the allegations in Paragraph 119.

120. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 120 and therefore denies them.

121. Harvard admits that its Task Force on the Prevention of Sexual Assault released a report in March 2016. Harvard states that to the extent the allegations in Paragraph 121 are from



a written document, the document speaks for itself and, to the extent the allegations of Paragraph 121 are inconsistent with any such document, Harvard denies the allegations in Paragraph 121.

122. Harvard states that to the extent the allegations in Paragraph 122 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 122 are inconsistent with any such document, Harvard denies the allegations in Paragraph 122. Harvard denies the remaining allegations in Paragraph 122.

123. Harvard states that to the extent the allegations in Paragraph 123 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 123 are inconsistent with any such document, Harvard denies the allegations in Paragraph 123.

124. Harvard states that to the extent the allegations in Paragraph 124 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 124 are inconsistent with any such document, Harvard denies the allegations in Paragraph 124.

125. Harvard states that to the extent the allegations in Paragraph 125 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 125 are inconsistent with any such document, Harvard denies the allegations in Paragraph 125.

126. Harvard states that to the extent the allegations in Paragraph 126 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 126 are inconsistent with any such document, Harvard denies the allegations in Paragraph 126.

127. Harvard states that to the extent the allegations in Paragraph 127 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 127 are inconsistent with any such document, Harvard denies the allegations in Paragraph 127.

128. Harvard admits that the Porcellian Club sent Dean Khurana a letter on April 27, 2016 notifying him that it had commissioned Welch Consulting regarding the March 7, 2016

Final Report of the Task Force on the Prevention of Sexual Assault. Harvard admits that the analysis identifies Jora B. Stixrud, Ph.D. as its author. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 128 and therefore denies them.

129. Harvard states that to the extent the allegations in Paragraph 129 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 129 are inconsistent with any such document, Harvard denies the allegations in Paragraph 129.

130. Harvard states that to the extent the allegations in Paragraph 130 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 130 are inconsistent with any such document, Harvard denies the allegations in Paragraph 130.

131. Harvard states that to the extent the allegations in Paragraph 131 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 131 are inconsistent with any such document, Harvard denies the allegations in Paragraph 131.

132. Harvard admits that Dean Khurana met with representatives of final clubs on or about March 29, 2016. Harvard denies the remaining allegations in the first and second sentences of Paragraph 132. Harvard states that to the extent the remaining allegations in Paragraph 132 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 132 are inconsistent with any such document, Harvard denies the allegations in Paragraph 132.

133. Harvard states that to the extent the allegations in Paragraph 133 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 133 are inconsistent with any such document, Harvard denies the allegations in Paragraph 133.

134. Harvard denies the allegations in Paragraph 134.

135. Harvard admits that, after March 2016, Dean Khurana met with representatives of sororities and fraternities. Harvard admits that Dean “Khurana did not issue a deadline on a co-ed decision to the Greek organizations.” Harvard denies the remaining allegations in Paragraph 135.

136. Harvard admits that Dean Khurana received a document entitled “Building a Better Harvard” on or about April 15, 2016. Harvard states that to the extent the allegations in Paragraph 136 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 136 are inconsistent with any such document, Harvard denies the allegations in Paragraph 136. To the extent that Paragraph 136 contains allegations neither set forth in a written document nor inconsistent with such a document, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 136 and therefore denies them.

137. Harvard states that to the extent the allegations in Paragraph 137 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 137 are inconsistent with any such document, Harvard denies the allegations in Paragraph 137.

138. Harvard states that to the extent the allegations in Paragraph 138 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 138 are inconsistent with any such document, Harvard denies the allegations in Paragraph 138.

139. Harvard admits that Dean Khurana met with representatives of final clubs on or about April 13, 2016. Harvard denies the remaining allegations in Paragraph 139.

140. Harvard states that to the extent the allegations in Paragraph 140 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 140 are inconsistent with any such document, Harvard denies the allegations in Paragraph 140.

141. Harvard states that to the extent the allegations in Paragraph 141 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 141 are inconsistent with any such document, Harvard denies the allegations in Paragraph 141.

142. Harvard states that to the extent the allegations in Paragraph 142 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 142 are inconsistent with any such document, Harvard denies the allegations in Paragraph 142.

143. Harvard states that to the extent the allegations in Paragraph 143 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 143 are inconsistent with any such document, Harvard denies the allegations in Paragraph 143.

144. Harvard states that to the extent the allegations in Paragraph 144 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 144 are inconsistent with any such document, Harvard denies the allegations in Paragraph 144.

145. Harvard states that to the extent the allegations in Paragraph 145 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 145 are inconsistent with any such document, Harvard denies the allegations in Paragraph 145.

146. Harvard states that to the extent the allegations in Paragraph 146 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 146 are inconsistent with any such document, Harvard denies the allegations in Paragraph 146. To the extent that the final sentence of Paragraph 146 refers to the March 2016 Final Report of the Task Force on the Prevention of Sexual Assault, Harvard denies Plaintiffs' characterization of the Report, and states that the Report speaks for itself.

147. Harvard states that to the extent the allegations in Paragraph 147 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 147 are inconsistent with any such document, Harvard denies the allegations in Paragraph 147.

148. Harvard denies the allegations in Paragraph 148.

149. Harvard admits that Dean Khurana met with representatives of fraternities and sororities on or about May 8, 2016. Harvard denies the remaining allegations in Paragraph 149.

150. Harvard states that to the extent the allegations in Paragraph 150 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 150 are inconsistent with any such document, Harvard denies the allegations in Paragraph 150. To the extent that Paragraph 150 contains allegations neither set forth in a written document nor inconsistent with such a document, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 150 and therefore denies them.

151. Harvard admits that a group calling itself the “Crimson Women’s Coalition” organized a rally regarding the Policy, among other topics, in and around Harvard Yard on May 10, 2016, which was the Monday after May 6, 2016. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 151 and therefore denies them.

152. Harvard states that to the extent the allegations in Paragraph 152 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 152 are inconsistent with any such document, Harvard denies the allegations in Paragraph 152.

153. Harvard states that to the extent the allegations in Paragraph 153 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 153 are inconsistent with any such document, Harvard denies the allegations in Paragraph 153.

154. Harvard states that to the extent the allegations in Paragraph 154 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 154 are inconsistent with any such document, Harvard denies the allegations in Paragraph 154.

155. Harvard admits that the Seneca is currently a recognized, gender-neutral student organization. Harvard states that to the extent the remaining allegations in Paragraph 155 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 155 are inconsistent with any such document, Harvard denies the allegations in Paragraph 155.

156. Harvard denies the allegations in the third sentence of Paragraph 156. Harvard lacks sufficient information to admit or deny the remaining allegations of Paragraph 156, and therefore denies them.

157. Harvard denies the allegations in Paragraph 157.

158. Harvard states that to the extent the allegations in Paragraph 158 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 158 are inconsistent with any such document, Harvard denies the allegations in Paragraph 158.

159. Harvard states that to the extent the allegations in Paragraph 159 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 159 are inconsistent with any such document, Harvard denies the allegations in Paragraph 159.

160. Harvard admits that in May 2016, Professor Lewis submitted a motion, along with eleven other professors in the Faculty of Arts and Sciences, for the Faculty's consideration. Harvard admits that Professor Lewis is a former Dean of Harvard College. Harvard states that to the extent the remaining allegations in Paragraph 160 are from a written document, the document

speaks for itself and, to the extent the remaining allegations of Paragraph 160 are inconsistent with any such document, Harvard denies the allegations in Paragraph 160.

161. Harvard states that to the extent the allegations in Paragraph 161 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 161 are inconsistent with any such document, Harvard denies the allegations in Paragraph 161.

162. Harvard admits that a faculty meeting occurred on December 6, 2016, and that the meeting was adjourned without a vote on Professor Lewis's motion. Harvard denies the remaining allegations in Paragraph 162.

163. Harvard states that to the extent the allegations in Paragraph 163 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 163 are inconsistent with any such document, Harvard denies the allegations in Paragraph 163.

164. Harvard states that to the extent the allegations in Paragraph 164 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 164 are inconsistent with any such document, Harvard denies the allegations in Paragraph 164. To the extent that Paragraph 164 contains allegations neither set forth in a written document nor inconsistent with such a document, Harvard lacks sufficient information to admit or deny the allegations in Paragraph 164 and therefore denies them.

165. Harvard admits that Dean Khurana emailed Harvard students on or about March 6, 2017 regarding the February 17, 2017 Final Report. Harvard states that to the extent the allegations in Paragraph 165 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 165 are inconsistent with any such document, Harvard denies the allegations in Paragraph 165.

166. Harvard states that to the extent the allegations in Paragraph 166 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 166 are inconsistent with any such document, Harvard denies the allegations in Paragraph 166.

167. Harvard states that to the extent the allegations in Paragraph 167 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 167 are inconsistent with any such document, Harvard denies the allegations in Paragraph 167.

168. Harvard states that to the extent the allegations in Paragraph 168 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 168 are inconsistent with any such document, Harvard denies the allegations in Paragraph 168.

169. Harvard states that to the extent the allegations in Paragraph 169 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 169 are inconsistent with any such document, Harvard denies the allegations in Paragraph 169.

170. Harvard states that to the extent the allegations in Paragraph 170 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 170 are inconsistent with any such document, Harvard denies the allegations in Paragraph 170.

171. Harvard states that to the extent the allegations in Paragraph 171 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 171 are inconsistent with any such document, Harvard denies the allegations in Paragraph 171.

172. Harvard denies the allegations in the first sentence of Paragraph 172. Harvard states that to the extent the remaining allegations in Paragraph 172 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 172 are inconsistent with any such document, Harvard denies the allegations in Paragraph 172.



173. Harvard states that to the extent the allegations in Paragraph 173 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 173 are inconsistent with any such document, Harvard denies the allegations in Paragraph 173.

174. Harvard states that to the extent the allegations in Paragraph 174 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 174 are inconsistent with any such document, Harvard denies the allegations in Paragraph 174.

175. Harvard states that to the extent the allegations in Paragraph 175 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 175 are inconsistent with any such document, Harvard denies the allegations in Paragraph 175.

176. Harvard states that to the extent the allegations in Paragraph 176 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 176 are inconsistent with any such document, Harvard denies the allegations in Paragraph 176.

177. Harvard states that to the extent the allegations in Paragraph 177 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 177 are inconsistent with any such document, Harvard denies the allegations in Paragraph 177.

178. Harvard states that to the extent the allegations in Paragraph 178 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 178 are inconsistent with any such document, Harvard denies the allegations in Paragraph 178.

179. Harvard admits that in April 2017, the Harvard chapter of the Alpha Epsilon Pi fraternity announced its intention to form a gender-neutral organization, and that the Aleph is currently a gender-neutral student organization. Harvard admits that the Delphic/Bee Club is a recognized, gender-neutral student organization formerly affiliated with the Delphic and Bee final clubs. Harvard admits that the KS is an independent, gender-neutral student organization

formerly affiliated with the Kappa Sigma fraternity. Harvard lacks sufficient information to admit or deny the remaining allegations in Paragraph 179 and therefore denies them.

180. Harvard denies the allegations in the first sentence of Paragraph 180. Harvard states that to the extent the remaining allegations in Paragraph 180 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 180 are inconsistent with any such document, Harvard denies the remaining allegations in Paragraph 180.

181. Harvard states that to the extent the allegations in Paragraph 181 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 181 are inconsistent with any such document, Harvard denies the allegations in Paragraph 181. Harvard denies the remaining allegations in Paragraph 181.

182. Harvard denies the allegations in the first sentence of Paragraph 182. Harvard states that to the extent the remaining allegations in Paragraph 182 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 182 are inconsistent with any such document, Harvard denies the allegations in Paragraph 182.

183. Harvard states that to the extent the allegations in Paragraph 183 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 183 are inconsistent with any such document, Harvard denies the allegations in Paragraph 183.

184. Harvard states that to the extent the allegations in Paragraph 184 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 184 are inconsistent with any such document, Harvard denies the allegations in Paragraph 184.

185. Harvard admits that a faculty vote on Professor Lewis's motion was scheduled for, and took place on, November 7, 2017. Harvard states that to the extent the remaining

allegations in Paragraph 185 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 185 are inconsistent with any such document, Harvard denies the remaining allegations in Paragraph 185.

186. Harvard admits the allegations in Paragraph 186.

187. Harvard states that to the extent the allegations in Paragraph 187 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 187 are inconsistent with any such document, Harvard denies the allegations in Paragraph 187.

188. Harvard states that to the extent the allegations in Paragraph 188 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 188 are inconsistent with any such document, Harvard denies the allegations in Paragraph 188.

189. Harvard admits that the Harvard Corporation is one of two Harvard governing boards. Harvard denies the remaining allegations in Paragraph 189.

190. No response to Paragraph 190 is required in light of the Court's August 9, 2019 Memorandum and Order, which dismissed Theta, Kappa, and John Doe 3. *See generally* ECF No. 39. To the extent a response is necessary, Harvard admits that the Fleur-de Lis Club is a recognized, gender-neutral student organization.

191. Harvard states that to the extent the allegations in Paragraph 191, including those in the chart accompanying Paragraph 191, are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 191 are inconsistent with any such document, Harvard denies the allegations in Paragraph 191.

192. Harvard states that to the extent the allegations in Paragraph 192 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 192 are inconsistent with any such document, Harvard denies the allegations in Paragraph 192.

193. Harvard states that to the extent the allegations in Paragraph 193 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 193 are inconsistent with any such document, Harvard denies the allegations in Paragraph 193.

194. Harvard admits that, in May 2018, it announced the creation of the Harvard College Social Organization Recognition Process and promulgated written guidance regarding the same. Harvard states that to the extent the allegations in Paragraph 194 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 194 are inconsistent with any such document, Harvard denies the allegations in Paragraph 194.

195. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 195 and therefore denies them.

196. Harvard lacks sufficient information to admit or deny the allegations in Paragraph 196 and therefore denies them.

## **COUNT I**

197. Harvard repeats and fully incorporates its responses to each of the preceding paragraphs 1-196 as if fully set forth herein.

198. Paragraph 198 states conclusions of law, to which no response is necessary. To the extent a response is necessary, Harvard denies the allegations in Paragraph 198.

199. Paragraph 199 states conclusions of law, to which no response is necessary. To the extent a response is necessary, Harvard denies the allegations in Paragraph 199.

200. Harvard denies the allegations in Paragraph 200.

## **COUNT II**

201. Harvard repeats and fully incorporates its responses to each of the preceding paragraphs 1-200 as if fully set forth herein.

202. Paragraph 202 states conclusions of law, to which no response is necessary. To the extent a response is necessary, Harvard denies the allegations in Paragraph 202.

203. Paragraph 203 states conclusions of law, to which no response is necessary.

204. Harvard denies the allegations in Paragraph 204.

### **COUNT III**

205. Harvard repeats and fully incorporates its responses to each of the preceding paragraphs 1-204 as if fully set forth herein.

206. Paragraph 206 states conclusions of law, to which no response is necessary.

207. Paragraph 207 states conclusions of law, to which no response is necessary. To the extent a response is necessary, Harvard denies the allegations in Paragraph 207.

208. Harvard denies the allegations in Paragraph 208.

209. Harvard states that to the extent the allegations in Paragraph 209 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 209 are inconsistent with any such document, Harvard denies the allegations in Paragraph 209. Harvard denies the remaining allegations in Paragraph 209.

### **COUNT IV**

210. Harvard repeats and fully incorporates its responses to each of the preceding paragraphs 1-209 as if fully set forth herein.

211. Paragraph 211 states conclusions of law, to which no response is necessary.

212. Harvard denies the allegations in Paragraph 212.

213. Harvard denies the allegations in the first sentence of Paragraph 213. Harvard states that to the extent the remaining allegations in Paragraph 213 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 213 are inconsistent with any such document, Harvard denies the allegations in Paragraph 213.

214. Harvard denies the allegations in the first sentence of Paragraph 214. Harvard states that to the extent the remaining allegations in Paragraph 214 are from a written document, the document speaks for itself and, to the extent the allegations of Paragraph 214 are inconsistent with any such document, Harvard denies the allegations in Paragraph 214.

215. Harvard denies the allegations in the final sentence of Paragraph 215. Harvard states that to the extent the remaining allegations in Paragraph 215 are from a written document, the document speaks for itself and, to the extent the remaining allegations of Paragraph 215 are inconsistent with any such document, Harvard denies the remaining allegations in Paragraph 215.

216. Harvard denies the allegations in Paragraph 216.

217. To the extent that Paragraph 217 states conclusions of law, no response is necessary. To the extent a response is necessary, Harvard denies the allegations in Paragraph 217.

218. Harvard denies the allegations in Paragraph 218.

#### **COUNT V**

219. Harvard repeats and fully incorporates its responses to each of the preceding paragraphs 1-218 as if fully set forth herein.

220. Paragraph 220 states conclusions of law, to which no response is necessary.

221. Paragraph 221 states conclusions of law, to which no response is necessary. To the extent a response is necessary, Harvard denies the allegations in Paragraph 221.

222. Harvard denies the allegations in Paragraph 222.

#### **PRAYER FOR RELIEF**

Harvard states that Plaintiffs' prayer for relief does not require a response. To the extent that a response is required, Harvard denies that Plaintiffs are entitled to any remedy or relief whatsoever.

### **DEMAND FOR JURY TRIAL**

To the extent Plaintiffs' demand for jury trial states a legal conclusion, no response is necessary.

### **AFFIRMATIVE DEFENSES**

Harvard asserts the following affirmative defenses on the basis of its current knowledge and information, and reserves the right to amend its affirmative defenses as the case progresses:

1. Plaintiffs' requested relief would violate Harvard's First Amendment rights to free speech and academic freedom.
2. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and/or estoppel.
3. Plaintiffs' claims for relief are barred, in whole or in part, by the doctrine of unclean hands.
4. The Policy is narrowly tailored to effectuate an important interest.
5. Plaintiffs' claim under the Massachusetts Civil Rights Act (Count V) is barred by the doctrine of assumption of risk.
6. Plaintiffs' claim under the Massachusetts Civil Rights Act (Count V) is barred by laches.

**WHEREFORE**, Harvard respectfully requests that the Court enter judgment in its favor and award it the costs of this action, together with attorneys' fees, expert fees, and such other relief as the Court may deem proper.

Dated: September 13, 2019

Respectfully submitted,

PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE

By its attorneys,

/s/ Roberto M. Braceras

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**CERTIFICATE OF SERVICE**

I, Roberto M. Braceras, hereby certify that on September 13, 2019, a true copy of the foregoing document was served by CM/ECF upon all other counsel of record in this action.

September 13, 2019

/s/ Roberto M. Braceras

Roberto M. Braceras